

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of	)	Appeal No. 95-0051
	)	
DAVID A. VOHS,	)	
Appellant	)	
	)	DECISION
and	)	
	)	
NINA C. (PIPER) HAhLER, )	)	
Appellant	)	October 28, 1995
	)	
_____	)	

STATEMENT OF THE CASE

Both David A. Vohs and Nina C. (Piper) Hahler applied for Quota Share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program. They each claimed credit for landings from two vessels, the F/V PACIFIC LADY and the F/V MATIE W. Mr. Vohs claims as the named lessee of the F/V PACIFIC LADY pursuant to a written lease, while Ms. Hahler claims as a partner or implied lessee. The written lease began on January 31, 1985, and remained in effect until the vessel was lost on or about September 6, 1985.<sup>1</sup> Ms. Hahler claims as the owner of the F/V MATIE W, while Mr. Vohs claims as a partner or co-owner, for the period of 1984 through 1986.

The Restricted Access Management Division [Division] issued an Initial Administrative Determination [IAD] to both parties on April 28, 1995. The IAD allocated the qualifying pounds from the F/V PACIFIC LADY entirely to Mr. Vohs and denied Ms. Hahler's claims to those pounds. The IAD also allocated qualifying pounds from the F/V MATIE W to Ms. Hahler and denied Mr. Vohs's claims to those pounds.

On May 17, 1995, Mr. Vohs filed a timely appeal of that portion of the IAD denying his claim. He did not specifically request either a written or an oral hearing. On June 26, 1995, Ms. Hahler filed a timely appeal of that portion of the IAD denying her claim. In her appeal, Ms. Hahler requested an oral hearing. In an order issued on August 31, 1995, the record in this appeal was closed and it was determined that a hearing was not necessary.

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<sup>1</sup>September 6, 1985, is the date specified in the initial administrative determination, although some statements indicate the vessel was lost on September 4, 1985. The discrepancy, if any, is immaterial. In several documents (e.g. June 10, 1994, and June 30, 1994, letters to the Division), Ms. Hahler claimed as an implied co-lessee only until June 30, 1985, when she left the vessel at the end of the sablefish season. In others, she claimed that status until the time the vessel sank.

In the case at hand all the determinative facts are of record. Although there is indeed a dispute as to some facts, those facts are not material in view of my ruling, below, that the written lease is conclusive as to the identity of the parties insofar as the F/V PACIFIC LADY is concerned, and that the other affidavits, documents, and correspondence of record amply support a ruling that Mr. Vohs had no ownership interest in the F/V MATIE W. Accordingly, this decision is being made on the basis of the existing record and without a hearing. The entirety of the administrative record, including all appeal documents, has been reviewed by the Appeals Officer prior to the issuance of this decision. Those documents having particular relevance are specifically referred to in the decision.

## ISSUES

1. Should Ms. Hahler be credited with one-half of the qualifying pounds resulting from sablefish landings from the F/V PACIFIC LADY during 1985, based on her claim that she leased the vessel at that time?
2. Should Mr. Vohs be credited with one-half of the qualifying pounds resulting from halibut and sablefish landings from the F/V MATIE W during 1984 through 1986, based on his claim that he had an ownership interest in the vessel at that time?

## BACKGROUND

Mr. Vohs and Ms. Hahler (then Ms. Piper) lived together and worked together in a variety of enterprises from approximately 1980 until they separated in 1986. They were never married to each other. During the course of this relationship they were both involved with two commercial fishing vessels: the F/V PACIFIC LADY and the F/V MATIE W.

### **THE F/V PACIFIC LADY**

The 85-foot F/V PACIFIC LADY was owned by Mr. Ole Harder. On January 31, 1985, Mr. Harder and Mr. Vohs executed and had notarized a written lease agreement. Mr. Vohs and Ms. Hahler both submitted a copy of the lease in support of their respective positions. Neither questions the authenticity of the document. The relevant provisions are paraphrased as follows:

- P The lease period is from February 1, 1985, through July 31, 1988.
- P The lessee is to pay the owner 30% of the Gross Stock at the end of each trip.
- P 5% of the lease fee shall be held in escrow by the owner which shall be refundable if the vessel is returned in good condition.
- P The lessee shall be responsible for all expenses, including insurance (\$500,000 hull and \$500,000 P & I), major repairs, fuel, provision, bait and gear.
- P The last provision reads as follows:

The owner agrees to loan the Leasee \_\_\_\_\_ for the purchase of black cod [sablefish] longline gear. This loan shall bear 10% annual interest from \_\_\_\_\_, 1985. Principal and interest shall be due and payable by December 31, 1985. [The blanks are not filled in.]

Mr. Harder signed as "Owner"; Mr. Vohs signed as "Leasee." There is no indication on the document that Mr. Vohs entered into the agreement on behalf of a partnership or any other entity.

Mr. Vohs and Ms. Hahler were both involved in the operation of the F/V PACIFIC LADY in the sablefish fishery until approximately June 30, 1985. [Hahler letter to the Division, June 10, 1994.] Ms. Hahler states that on that date she left the vessel and began salmon trolling in her own boat, the F/V MATIE W. Mr. Vohs continued to operate the F/V Pacific Lady and ran it as a tender on a packing contract with Seafood Producers Cooperative. It sank on September 4, 1985, with the loss of life of one crew member. [Hahler letter to the Division, July 13, 1994.] After the sinking, Mr. Harder brought an action against Mr. Vohs, apparently for failing to have paid insurance premiums as required in the lease. Mr. Vohs and Mr. Harder eventually settled the matter per an agreement executed on January 31, 1994, and February 7, 1994. Ms. Hahler was not a party to that suit. [See copy of settlement agreement.] The above facts are essentially undisputed.

In a 1989 admiralty action involving the F/V MATIE W (discussed later in this decision), Ms. Hahler executed an affidavit stating, in part: "During our relationship I fished with Mr. Vohs on a vessel he had leased, the Pacific Lady." [Affidavit of May 2, 1989, page 5.] She argues, however, that she was an implied or de facto co-lessee of the F/V PACIFIC LADY. In support of this view she makes the following assertions:

1. Ms. Hahler asserts in her appeal that Mr. Harder, if allowed to testify, would state that: (a) the lease was, operationally, between himself and both Mr. Vohs and Ms. Hahler; (b) Mr. Vohs and Ms. Hahler held themselves out as a married couple during the lease negotiations and that Mr. Harder considered the signature of one of the parties sufficient to bind both of them in the lease; and (c) he transferred funds to Ms. Hahler pursuant to the lease, recognizing her as a co-lessee.

2. Ms. Hahler asserts that Mr. Harder opened a money market account at the National Bank of Alaska in her name and deposited to it a loan of \$30,000 (in three payments between November of 1984 and January of 1985) of which \$10,000 was for gear and \$20,000 for improvements to the boat. She further asserts such, in conjunction with the blank clause relating to a loan in the lease establishes she was a co-lessee. [Hahler letter to the Division, February 9, 1995.]

3. Ms. Hahler asserts she took an active role in managing the vessel, that she and Mr. Vohs ran the operation as a partnership, that she "shouldered financial burdens and risks of the fishing operation" and that the overall profit from the venture was merged with other funds the two controlled

together. [Hahler letters to the Division, September 21, 1994, and February 9, 1995.] She further asserts that she had significant prior experience in fishing activities, including running her own boat, and that she would never have countenanced serving under Mr. Vohs on the F/V PACIFIC LADY as a "mere" crew member, as he claims. [Hahler letter to the Division, February 1, 1995.]

4. Ms. Hahler asserts that Mr. Harder sent her registered letters after the sinking, thereby indicating he thought she shared some liability with Mr. Vohs. However, as noted earlier, it does not appear that she was named in the suit or participated in the settlement agreement. [Hahler letter to the Division, February 1, 1995 and copy of settlement agreement.]

5. Ms. Hahler asserts after her 1986 separation from Mr. Vohs, she learned that the surviving crew members of the F/V PACIFIC LADY had not received their final pay and that she paid them out of her own funds. [Hahler letter to the Division, January 31, 1995.]

6. Ms. Hahler asserts in her appeal that she could present a bank officer who, if allowed to testify, would state that Ms. Hahler operated as a co-lessee of the F/V PACIFIC LADY.

#### **THE F/V MATIE W**

The F/V MATIE W, a 34-foot troller adapted to longlining, was purchased by Ms. Hahler in 1981. Mr. Vohs performed substantial repairs on the vessel. Between 1984 and 1986, both Mr. Vohs and Ms. Hahler operated it in the sablefish and halibut fisheries. When the two separated in 1986, they apparently<sup>2</sup> entered into a property settlement agreement. [Piper Federal Court affidavit, May 2, 1989; Vohs letter to the Division, December 21, 1994.] An unexecuted copy contains a recital that the two parties had an interest in "certain land and personal property," which included the F/V MATIE W as well as another vessel. The document states that "The purpose of this agreement is to divide those interests in such a way that each party shall abandon any present or future claims against the other." The parties agreed, among other things, that the F/V MATIE W was Ms. Hahler's, that the other vessel was Mr. Vohs's, and that Ms. Hahler was to make certain periodic payments to Mr. Vohs. Ms. Hahler subsequently repudiated the property settlement agreement, which resulted in a lawsuit (discussed below). In an affidavit filed during the course of that lawsuit, she alleges that she entered into the agreement under duress or coercion. [Affidavit of May 2, 1989.]

In 1989, Mr. Vohs brought an admiralty action in Federal District Court in Sitka seeking to arrest the F/V MATIE W because Ms. Hahler had ceased paying him as specified in the agreement. In a sworn affidavit he filed in that action he stated, in part:

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<sup>2</sup>Although both parties acknowledge that some kind of agreement was entered into, no signed and dated copy of a document was presented. An unsigned and undated copy presented by Mr. Vohs is of record and is the source of this information. However, Mr. Vohs's May 11, 1995 letter to RAM suggests it was merely a proposal for a renegotiated settlement agreement.

In the spring of 1986, I also fished on the F/V Matie W for black cod. I have a black cod permit and I sold all the black cod on my permit. I believe that we caught approximately 17,000 pounds over the approximate 17 day opening of which approximately 10 days were spent fishing. There were two crew members who received a 10% share. The boat owner Nina received a 30% share and the rest of the proceeds as well went directly to Nina. . . . Nina made all decisions about the F/V Matie W., except those decisions I made in deciding how the vessel should be repaired. She decided where the vessel was kept, when it was fished, who fished it, who stayed on the vessel, whether it was to be used recreationally and all other decisions commonly made by the owner. . . . At no time was it understood that I was obligated for any of the losses caused by the F/V Matie W. Nina dealt with all administrative and legal matters regarding the F/V Matie W. She obtained the insurance in her name. She paid all premiums. She dealt with all permits and licenses. She paid all fees. All purchase accounts were kept in her name, including insurance, permits and licenses, fuel and marine supplies. She paid all charges. All accounts were paid by Nina from either her personal account or the vessel's account, neither of which I was a joint signature. The F/V Matie W is registered to Nina Piper."

[Affidavit of May 2, 1989, page 5.]

Mr. Vohs argues that he became co-owner of the F/V MATIE W by virtue of the work he performed on the vessel, and because the vessel was among jointly owned property listed in the property settlement agreement. He further asserts that the Federal District Court case was dismissed on the grounds that he was co-owner of the vessel. Mr. Vohs argues, in essence, that his 1989 Federal District Court affidavit should now be considered inoperative because: (1) counsel for Ms. Hahler had allegedly argued in his 1989 brief that Mr. Vohs was a part owner of the F/V Matie W, and therefore had no rights to a lien; (2) his then-attorney "encouraged" him to make the statement in response, but it was not wholly correct; (3) the court dismissed his lawsuit with prejudice, thereby impliedly ruling that he was a partner; and (4) the affidavit should not be operative to the 1984-1986 period because it was executed after the fact. No findings of that court have been presented. The record indicates the case was dismissed, but does not include the basis for that dismissal. Mr. Vohs also argues that Ms. Hahler "admits in her documentation to the RAM Division that we had a partnership in the F/V Matie W." [Vohs May 11, 1995, letter to the Division; 1989 brief of Hahler's attorney.]

## DISCUSSION

### **1. Should Ms. Hahler be credited with one-half of the qualifying pounds resulting from sablefish landings from the F/V PACIFIC LADY during 1985, based on her claim that she leased the vessel at that time?**

Under the IFQ program, as implemented by the Division, an applicant for an initial issuance of QS may receive credit only for legal landings of Pacific halibut or sablefish that were made from a vessel owned

or leased by the applicant at the time of the landings. See 50 C.F.R. § 676.20. Section 676.20(a)(1)(iii) provides:

Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

The regulations state clearly that a written lease shall be conclusive evidence. In this case there are no allegations of fraud, collusion, incapacity, or coercion as to the execution of the lease. There is nothing ambiguous on the face of the lease regarding the identity of the lessee. The lessee is Mr. Vohs.<sup>3</sup> The question is whether a person who claims to have been a party to a written lease, even though not named in the document and even though she was not a signatory to it, can be allowed to establish by evidence of the actual conduct of the parties that she was, in fact, a lessee. The answer is no.

Ms. Hahler does not contest the validity of Mr. Vohs's written lease, but she would like to show that she, too, was a party to that lease from its inception. Her theory is that Mr. Harder always considered her to be a lessee and that he treated her as a lessee. In addition, she would show that she acted as a lessee by "shouldering the financial burdens and risks of the fishing operation."

The problem with Ms. Hahler's entire argument is that the written lease between Mr. Harder and Mr. Vohs is conclusive as to who the parties to the lease were. Regardless of any testimony or evidence she has presented or might present regarding the actual conduct of the parties, where a written lease exists, the terms of the document are controlling.<sup>4</sup> By providing that a written vessel lease is conclusive evidence of the existence of a lease, the regulations express an evidentiary preference for written

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<sup>3</sup>Counsel for Ms. Hahler argues in his appeal on her behalf that looking at the lease alone would place form over substance. However, this approach fails to properly recognize the mandatory nature of the word "conclusive," or the underlying purpose of written contracts.

<sup>4</sup>As stated in other appeals decisions, evidence of subsequent conduct by the parties *can* be introduced to show that a valid lease was terminated before the end of its stated term or extended beyond its stated term. In Dittrick v. Weikal, Appeal No. 95-109, October 20, 1995, *aff'd*, October 24, 1995, the parties stipulated that the lessee had returned the vessel to the owner before the end of the term and did not fish the vessel again. In Treinen v. Scudder, Appeal No. 95-104, October 11, 1995, *aff'd*, October 18, 1995, the lessee presented evidence of the parties' conduct following the end of the stated term to show that the written lease was extended, as expressly contemplated by the parties.

agreements over oral agreements. The regulations do not contemplate that a written lease that clearly shows only one party as lessee can be contradicted by oral testimony that the agreement actually included another unnamed party as a co-lessee. To allow such proof would be to negate the conclusiveness required by the regulation. It would also violate the parol evidence rule. The unambiguous terms of a written lease, which embody a complete and final expression of the agreement between the parties, cannot be contradicted by oral testimony that one of the parties intended to include an unnamed third person as a party to the agreement. Nor can such an unexpressed intent be proven by other evidence of actual conduct. It can be presumed that the original parties to a written lease are the only parties, unless another writing is produced to rebut that presumption. In this case, Ms. Hahler has not submitted, nor does she claim to have, another written agreement or amendment showing that she was ever made a party to the lease. Therefore, it must be concluded that Mr. Vohs was the only lessee of the F/V PACIFIC LADY during the 1985 fishing season.

Even if Ms. Hahler were allowed to rely on extrinsic evidence to show that she was a party to the written lease, the evidence she has offered and proposed would not establish that she was a lessee. I have given careful consideration to Ms. Hahler's contention that the reference to a gear loan in the lease, coupled with the fact Mr. Harder transmitted funds to an account in her name (which were purportedly used to purchase gear and finance vessel improvements), is tantamount to naming her in the lease itself. However, I do not find such persuasive. The loan, apparently made in three installments, was made prior to the execution of the lease. Assuming (without deciding) that the reference to a loan in the lease was intended to retroactively document those transactions, that did not alter the terms of the lease or the parties thereto.

Although the intermingling of funds and other attendant circumstances might indicate that a de facto partnership operated the vessel, they would be insufficient to establish that the partnership was co-lessee. The regulations do not provide for the granting of quota shares to a partnership (or its successors in interest) that merely operated and fished a vessel. The partnership must have leased (or owned) the vessel if there is to be a sharing of the Quota Share.

I have made reference to several allegations of Ms. Hahler, such as her active management of the vessel and the payment by her to the surviving crewmembers, but I do not find them relevant. Even if true, these allegations would only support a finding that the two *fished sablefish* as a partnership, not that they *leased the vessel* as a partnership. Mr. Harder's alleged belief and intent that he was actually leasing to both Mr. Vohs and Ms. Hahler as husband and wife cannot overcome the conclusiveness of the written lease.<sup>5</sup> Neither could the proposed testimony by a bank officer that Ms. Hahler acted as a co-lessee of the vessel.

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<sup>5</sup>Interestingly enough, Ms. Hahler, in her letter of January 31, 1995, denies that the two ever held themselves out as married. Further, as previously noted, the suit Mr. Harder filed over the loss of the F/V PACIFIC LADY named Mr. Vohs as the sole defendant.

Ms. Hahler's admission that the F/V PACIFIC LADY was leased by Mr. Vohs and that she fished on it [May 2, 1989, Federal District Court affidavit] is not, in itself, afforded any significant weight, but it does serve to buttress the other relevant facts that militate against her position. Similarly, Ms. Hahler's assertion in several of her submissions to the Division that she was a co-lessee of the vessel [only] until June 30, 1995, though not dispositive in itself, would tend to support a finding that she was involved in a partnership in the sablefish fishing operation, not in the lease of the vessel.

**2. Should Mr. Vohs be credited with one-half of the qualifying pounds resulting from halibut and sablefish landings from the F/V MATIE W during 1984 through 1986, based on his claim that he had an ownership interest in the vessel at that time?**

Mr. Vohs claims no lease in the F/V MATIE W.<sup>6</sup> The vessel was registered to Ms. Hahler as sole owner. It appears he claims to be a part owner because he worked on the vessel, because of the property settlement agreement, and because his 1989 maritime lien suit was dismissed.<sup>7</sup> Ms. Hahler acknowledges that Mr. Vohs worked on the vessel, but that fact does not establish that he was a part owner.<sup>8</sup> Further, I cannot find that the property settlement agreement is dispositive. The recital quoted is typical wording designed to cover all eventualities. It is not an acknowledgement of shared ownership.

Insofar as the admiralty action is concerned, I must admit to having the greatest of difficulty in accepting Mr. Vohs's attempt to recant the affidavit he provided to the Federal District Court in Sitka. As stated previously, there is no competent evidence that the dismissal was due to a finding that Mr. Vohs was a part owner of the vessel. The affidavit of Mr. Vohs is extremely detailed in describing his and Ms. Hahler's relation to the F/V MATIE W. It clearly evidences that Mr. Vohs had no ownership interest. Mr. Vohs's contention that the affidavit is inoperative as to the situation regarding F/V MATIE W in 1984 through 1986 because it was executed after that time is, simply, without merit.

I must conclude that Ms. Hahler was the sole owner of the MATIE W from 1984 through 1986.

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<sup>6</sup>Nor could he, in view of his federal court affidavit of May 2, 1989.

<sup>7</sup>Although he also asserted in his appeal that Ms. Hahler had acknowledged he was a partner [in an unspecified letter to the Division], the only such reference I could locate is her February 1, 1995, letter that they ". . . were partners in White Squall, a 28 foot pleasure sailboat that we built together; Matie W, owned by me, fished together from 1983-1986 . . .", and that the [Admiralty] suit was dismissed because "partners cannot sue partners." Neither of these is an acknowledgement of part ownership in the vessel.

<sup>8</sup>An examination of the brief of Ms. Hahler's attorney in that action indicates that he was not arguing that Mr. Vohs was a part owner of the boat. Rather he argued that Mr. Vohs' involvement was *in the nature of* a joint venturer, not as the type of "outsider" for whom maritime lien protection was envisaged.



Therefore, Mr. Vohs should not receive credit for any qualifying pounds from landings from that vessel during the period 1984 through 1986. All such pounds should be allocated to Ms. Hahler.

#### FINDINGS OF FACT

1. Mr. Vohs entered into a written vessel lease of the F/V PACIFIC LADY with the owner of the vessel, Mr. Ole Harder, on January 31, 1985. The stated period of the lease was February 1, 1985, through July 31, 1988.
2. The F/V PACIFIC LADY sank on or about September 4, 1985, while Mr. Vohs was in possession of the vessel.
3. Ms. Hahler assisted Mr. Vohs in 1985 sablefish fishing operations aboard the F/V PACIFIC LADY until June 30, 1985.
4. Ms. Hahler purchased the F/V MATIE W in 1981 and was the registered owner during the period of time in question in this appeal, 1984 through 1986.
5. Mr. Vohs assisted Ms. Hahler in halibut and sablefish fishing operations aboard the F/V MATIE W during one or more openings from 1984 through 1986.

#### CONCLUSIONS OF LAW

1. The written lease submitted by both Appellants is conclusive evidence that Mr. Vohs was the sole lessee of the F/V PACIFIC LADY from January 31, 1985, until the vessel sank on or about September 4, 1985.
2. Ms. Hahler was not a party to the 1985 written vessel lease between Mr. Harder and Mr. Vohs. Ms. Hahler is, therefore, not qualified to receive credit for qualifying pounds resulting from sablefish landings made from the F/V PACIFIC LADY during the period January 31, 1985, through September 4, 1985.
3. The evidence submitted by Mr. Vohs, including his work on the vessel, the property settlement agreement between him and Ms. Hahler, and the dismissal of his 1989 admiralty suit, does not establish that he had any ownership interest in the F/V MATIE W during the period 1984 through 1986. Mr. Vohs is, therefore, not qualified to receive credit for qualifying pounds resulting from sablefish or halibut landings made from the F/V MATIE W during the period 1984 through 1986.
4. Ms. Hahler was the sole owner of the F/V MATIE W during the period 1984 through 1986.

## DISPOSITION

The Division's Initial Administrative Determination, dated April 28, 1995, involving a conflict between the Appellants over the allocation of qualifying pounds of sablefish landed from the F/V PACIFIC LADY and qualifying pounds of halibut and sablefish landed from the F/V MATIE W is AFFIRMED. This decision takes effect on November 27, 1995, unless by that date the Regional Director orders review of the decision.

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James Cufley  
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Because both parties in this appeal still have an opportunity to receive QS and the corresponding IFQ for the 1995 fishing season, I recommend that the Regional Director expedite review of this decision and, if there is no substantial disagreement with it, promptly affirm the decision and thereby give it an immediate effective date.

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Edward H. Hein  
Chief Appeals Officer